

MORTGAGE ELECTRONIC REGISTRATION SYSTEM (MERS)
FORECLOSURES IN MICHIGAN

1. Purpose. This circular announces Department of Veterans Affairs (VA) policy following a decision by the Michigan Court of Appeals that declared void all non-judicial foreclosures in the name of Mortgage Electronic Registration System (MERS).

2. Background on MERS. MERS was established in the 1990s by the mortgage industry to allow centralized electronic registration of mortgages, thereby avoiding delays in local recording offices when tracking loans, and also saving money by bypassing local recording fees. MERS is named in the mortgage as nominee for the lender, and thereafter tracks all assignments of mortgages in its electronic records. During the mortgage crisis some borrowers have questioned foreclosures conducted in the name of MERS. Many State Courts have issued decisions upholding the right of MERS to foreclose on behalf of the actual loan holder, while others have questioned the validity of those foreclosures. Earlier this year MERS changed its operating rules to preclude foreclosure in the name of MERS. Due to this revision, it is likely that future cases will not be foreclosed in the name of MERS.

3. Michigan Foreclosures. In Michigan, the prevalent method of foreclosure is a non-judicial process involving advertisement of a scheduled sale by the owner of the indebtedness, the owner of an interest in the indebtedness, or the servicing agent of the mortgage. The Michigan Court of Appeals, in an April split decision, determined that MERS lacked an ownership interest in the indebtedness, and therefore foreclosure by advertisement in the name of MERS was invalid. VA has been advised that the decision is on appeal, but until that opinion is reversed, VA must accept the position that non-judicial foreclosures in the name of MERS in Michigan are invalid.

4. VA-Acquired Property Inventory. VA has over 300 homes in inventory in Michigan, but it appears a very small number of those were foreclosed in the name of MERS. VA has decided that, based on the Appellate Court decision and reports of difficulties in obtaining title insurance on such cases, all Michigan properties in inventory that were foreclosed in the name of MERS will be returned to the former servicer for proper termination. Properties already resold by VA are not affected at this time.

5. Process for Return of Properties. VA is presently coordinating between its Loan Administration and Property Management activities to identify all affected cases and begin notifying servicers of cases where VA has determined that a sale was not valid as a result of foreclosure in the name of MERS. Property Management will notify the assigned VA Loan Technician, who will notify the servicer by e-mail of the need to submit an "Invalid Sale Results" event through the Servicer Web Portal in the VA Loan Electronic Reporting Interface (VALERI) application. If the servicer does not timely submit the event, then

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VA will submit the event on the servicer's behalf. After this event is successfully processed and accepted in the system, VALERI will generate a Bill of Collection (BOC) for the acquisition payment and any claim payments that have been certified by VA. This event will also generate notice to VA's property management contractor that the property has been removed from VA's records. The contractor will prepare a listing of all expenses incurred in management of the property, so that VA's Property Management Oversight Unit can issue an additional BOC for these expenses.

6. VALERI Events. Please note that it is not necessary to report an "Improper Transfer of Custody" event in conjunction with an "Invalid Sale Results" event, as the Invalid Sale Results event automatically initiates the process of reconveying a property after the event is successfully processed in VALERI. If only an "Improper Transfer of Custody" event is reported, the loan status remains as "terminated" in VALERI, so that a claim may be filed. However, the property may not subsequently be reconveyed to VA. When a servicer fails to timely provide acceptable evidence of title following termination, VA will initiate the "Improper Transfer of Custody" event to convey the property back to the servicer, but the loan remains terminated in VALERI and a claim may be filed.

7. Additional Reconveyances. As part of this review, VA found a number of cases in which acceptable title evidence has not been provided timely on cases in Michigan. Servicers will be notified of these cases and will be requested to report the "Improper Transfer of Custody" event in VALERI, as VA will be returning these properties and issuing BOCs to recover acquisition payments. If one of these cases actually involved a MERS foreclosure that was invalid, however, then the servicer should report the "Invalid Sale Results" event so that the record in VALERI will revert to an active loan. That will allow the servicer to complete a proper foreclosure, and the servicer will then have the option to convey the property to VA. Any claim in such a case may be adjusted to the amount VA would have paid if the first termination had been completed properly.

8. Rescission: This circular is rescinded July 1, 2014.

By Direction of the Under Secretary for Benefits

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